

Dated: August 25, 2026
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re:

**DWAN AKOI RILEY,
Debtor.**

Case No. 25-23245-DEB
Chapter 11

**MEMORANDUM OPINION AND ORDER DENYING DEBTOR'S
MOTION FOR RECONSIDERATION OF ORDER DISMISSING CASE**

This case came before the Court on February 10, 2026, at 11:00 a.m., on Debtor's *Motion for Reconsideration of Order Dismissing Case* ("Motion for Reconsideration"), pursuant to Federal Rule of Bankruptcy Procedures 9024 and Federal Rule of Civil Procedure 60.¹ The Court previously entered an *Order Granting United States Trustee's Motion to Dismiss Case and Notice of Entry Thereof* on January 16, 2026.²

¹ Debtor's *Mot. for Reconsideration of Order Dismissing Case*, ECF No. 103.

² *Order Granting United States Trustee's Motion to Dismiss Case and Notice of Entry Thereof*, ECF No. 94.

Debtor's *Motion for Reconsideration* argues that while the United States Trustee ("UST") sought dismissal for three reasons including "(i) failure to file timely operating reports; (ii) failure to provide the UST with certain requested documents; and (iii) failure to open a DIP account[.]" the Court dismissed Debtor's Chapter 11 case due to failure to make adequate protection payments to two creditors, WBL SPO II, LLC ("WBL") and Strategic Funding Source, Inc. d/b/a Kapitus ("Kapitus").³ Debtor asserts the discrepancy between the UST's *Motion to Dismiss* and the reasoning for the Court's ultimate dismissal of the chapter 11 matter constitutes "surprise" under Rule 60(b)(1), as Debtor had no notice that the Court would consider dismissal on this ground."⁴ For the reasons stated below, this Court denies Debtor's *Motion for Reconsideration*, and maintains its previous dismissal of Debtor's chapter 11 matter.

I. BACKGROUND

Debtor filed her Chapter 11 Voluntary Petition on July 2, 2025.⁵ This is Debtor's fifth bankruptcy case.⁶ Debtor owns and operates a business known as Rainbow Kidz Learning Center ("Rainbow Kidz"), which is a day care center in Memphis, Tennessee. Debtor stated that she

³ Debtor's *Mot. for Reconsideration of Order Dismissing Case* at pp. 2, ECF No. 103.

⁴ Debtor's *Mot. for Reconsideration of Order Dismissing Case* at pp. 2, ECF No. 103.

⁵ Volunt. Pet., ECF No. 1.

⁶ Debtor's first bankruptcy case in the Western District of Tennessee was Chapter 13 matter that did not reach the plan confirmation stage, as the case was dismissed on May 18, 2018, for failure to abide by Court orders. *Order Dismissing Case; Directing Trustee to File Final Accounting and Directing Employer to Cease Deductions*, (Case No. 18-20661, ECF No. 32). Debtor refiled a chapter 13 case on June 27, 2018, which also did not reach the plan confirmation stage, as the case was dismissed on November 1, 2018, for failure to pay, failure to provide required documents, and for other sufficient grounds. *Order Dismissing Case and Notice of Entry Thereof; Directing Trustee to File Final Accounting and Directing Employer to Cease Deductions*, (Case No. 18-25534, ECF No. 90). Debtor filed a third Chapter 13 case on August 16, 2019. *See Volunt. Pet.*, (Case No. 19-26507, ECF No. 1). Debtor's third Chapter 13 filing was also dismissed on January 9, 2020, for Debtor's failure to appear at the meeting of creditors as ordered by the Court, and for other sufficient grounds. *See Order Dismissing Case and Notice of Entry Thereof; Directing Trustee to File Final Accounting and Directing Employer to Cease Deductions*, (Case No. 19-26507, ECF No. 57). Debtor filed a fourth chapter 13 case on April 1, 2024, which was converted to a chapter 11 case on July 25, 2024. *See Order Granting Motion to Convert Case from Chapter 13 to Chapter 11 Subchapter V*, (Case No. 24-21515, ECF No. 86). The Court granted an *Agreed Order Dismissing Case Without Prejudice* on March 27, 2025. *See Agreed Order Dismissing Case Without Prejudice* (Case No. 24-21515, ECF No. 252).

relies on Rainbow Kidz as funding for “Debtor’s living expenses and plan of reorganization.”⁷

Debtor advised that Rainbow Kidz reliably receives income from the State of Tennessee.⁸

Debtor’s schedules provide that Debtor owned one (1) piece of real property valued at \$275,000.00. Further, Debtor owns five (5) vehicles including: (1) 2021 Cadillac Escalade valued at \$60,000.00; (2) 2016 Mercedes G65W4 valued at \$60,000.00; (3) 2022 Bentley Bentayga V-8 valued at \$165,000.00; (4) 2021 Bentley Flying Spur valued at \$148,000.00; and (5) 2019 Lamborghini Urus valued at \$148,000.00.⁹ Moreover, Debtor indicated gross income during the calendar year 2023, was \$351,000.00; in the following year, 2024, Debtor’s gross income was \$200,000.00, and Debtor’s gross income was listed at \$140,000.00 between January 1, 2025, through July 17, 2025.¹⁰

Because Debtor had two bankruptcy cases dismissed in the year prior to filing this case, Debtor filed a *Verified Motion of Debtor to Extend the Automatic Stay ad Request for Expedited Hearing*.¹¹ Debtor asserted that medical issues arising from pregnancy complications caused Debtor difficulty in managing and operating the business and her assets for several months.¹² Debtor advised that she agreed to voluntarily dismiss the case because she would be unable to

⁷ Debtor’s *Verified Mot. of Debtor to Extend the Automatic Stay and Request for Expedited Hr’g.*, at pp. 1, ECF No. 18.

⁸ Debtor’s *Verified Mot. of Debtor to Extend the Automatic Stay and Request for Expedited Hr’g.*, at pp. 1, ECF No. 18.

⁹ Volunt. Pet. Sch. A/B, ECF No. 1.

¹⁰ Volunt. Pet. Statement of Financial Affairs for Individuals Filing for Bankruptcy, ECF No. 1.

¹¹ Debtor’s *Verified Mot. of Debtor to Extend the Automatic Stay and Request for Expedited Hr’g.*, ECF No. 18.

¹² Debtor’s *Verified Mot. of Debtor to Extend the Automatic Stay and Request for Expedited Hr’g.*, at pp. 3, ECF No. 18.

comply with the requirements of 11 U.S.C. § 1129.¹³ Debtor advised that her circumstance had changed due to relinquishing assets such as two (2) Bentley automobiles, and that Debtor would take a salary from Rainbow Kidz to cover her living expenses.¹⁴ Debtor further advised that the health of her family and herself had since improved.¹⁵ Creditors, Kapitus and WBL, filed responses objecting to Debtor's *Motion*.¹⁶ The parties entered into an agreed order, which the Court signed, on October 3, 2025, the terms of which provided as to WBL that: (1) Debtor would make monthly adequate protection payments to WBL in the amount of \$2,080.00 beginning September 15, 2025; (2) Debtor would provide proof of property insurance to WBL; and (3) the Chapter 11 plan would provide WBL in the amount of \$380,000.00.¹⁷ The *Agreed Order* further provided as to Kapitus that Debtor and Kapitus would mutually negotiate an agreed upon settlement to resolve Kapitus' *Objection* and other contested matters pending, and that such settlement would be memorialized through an agreed order.¹⁸ Lastly, the *Agreed Order* outlined

¹³ Debtor's *Verified Mot. of Debtor to Extend the Automatic Stay and Request for Expedited Hr'g.*, at pp. 3, ECF No. 18.

¹⁴ Debtor's *Verified Mot. of Debtor to Extend the Automatic Stay and Request for Expedited Hr'g.*, at pp. 21-22, ECF No. 18.

¹⁵ Debtor's *Verified Mot. of Debtor to Extend the Automatic Stay and Request for Expedited Hr'g.*, at pp. 24-26, ECF No. 18.

¹⁶ See Kapitus' *Objection of Strategic Funding Source, Inc. d/b/a Kapitus to Verified Mot. of Debtor to Extend the Automatic Stay and Request for Expedited Hr'g.*, ECF No. 23; WBL's *Resp. by WBL SPO II, LLC to Verified Mot. of Debtor to Extend the Automatic Stay and Request for Expedited Hr'g.*, ECF No. 33.

¹⁷ See *Agreed Order Between WBL SPE II, LLC. Strategic Funding Source, Inc d/b/a Kapitus, and the Debtor Extending the Automatic Stay and Resolving Their Respective Objection to the Debtor's Verified Mot. to Extend the Automatic Stay and Request for Expedited Hr'g.*, ECF No. 64.

¹⁸ See *Agreed Order Between WBL SPE II, LLC. Strategic Funding Source, Inc d/b/a Kapitus, and the Debtor Extending the Automatic Stay and Resolving Their Respective Objection to the Debtor's Verified Mot. to Extend the Automatic Stay and Request for Expedited Hr'g.*, ECF No. 64.

that if Debtor's case was dismissed, Debtor would be barred from filing another bankruptcy case for 180 days from the date of dismissal.¹⁹

On November 14, 2025, the attorneys for the UST filed a *Motion to Dismiss or Convert Case Pursuant to 11 U.S.C. § 1112(b)* ("Motion to Dismiss").²⁰ UST argued that the Debtor failed to file monthly operating reports for the months of August, September, and October 2025, the failure of which constituted "cause" to dismiss or convert under 11 U.S.C. § 1112(b)(4)(F).²¹ Citing 11 U.S.C. § 1112(b)(4)(K), the UST asserted that Debtor's failure to pay quarterly fees to the UST constituted cause for dismissal or conversion.²² Further, because Debtor did not timely file disclosure statement or a plan, and because Debtor did not provide UST with reasonably requested documentation, UST asserted that the failure to do so also constituted cause to support dismissal or conversion.²³ Debtor objected to UST's *Motion to Dismiss* asserting it had cured several of the outstanding reports and documentation, and that Debtor was otherwise compliant because there was no statutory deadline to file a plan.²⁴

On December 10, 2025, WBL filed a *Motion to Terminate Automatic Stay and For Abandonment* ("Motion for Relief from Stay") arguing that Debtor had not made an adequate protection payment as the above-referenced October 2, 2025, *Agreed Order* between WBL and

¹⁹ See *Agreed Order Between WBL SPE II, LLC, Strategic Funding Source, Inc d/b/a Kapitus, and the Debtor Extending the Automatic Stay and Resolving Their Respective Objection to the Debtor's Verified Mot. to Extend the Automatic Stay and Request for Expedited Hr'g.*, ECF No. 64.

²⁰ U.S. Trustee's *Motion to Dismiss or Convert Case Pursuant to 11 U.S.C. § 1112(b)*, ECF No. 74.

²¹ Trustee's *Mot. to Dismiss*, at pp. 5, ECF No. 74. See 11 U.S.C. § 1112(b)(4)(F) ("the court shall convert . . . or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . "cause" includes . . . unexcused failure to satisfy timely any filing or reporting requirement established by this title . . .").

²² U.S. Trustee's *Mot. to Dismiss*, at pp. 7, ECF No. 74.

²³ U.S. Trustee's *Mot. to Dismiss*, at pp. 9-10, ECF No. 74.

²⁴ Debtor's *Obj. to Trustee's Mot. to Dismiss*, at pp. 9, 12, 14-17, ECF No. 79.

Debtor required.²⁵ WBL requested immediate relief from the automatic stay to foreclose on the property and collect proceeds received upon the sale of the real property.²⁶ Debtor filed an objection to WBL's motion in which Debtor advised that the real property at issue is the foundation of Debtor's business, and thus, is absolutely necessary for an effective reorganization.²⁷ Debtor asserted she was prepared to cure all arrearages owed under the *Agreed Order*.²⁸

On January 7, 2026, the Court entered an *Order Granting Motion to Continue Hearings on the U.S. Trustee's Motion to Convert Chapter 11 Case to Chapter 7 and Continuing WBL SPO II, LLC's Motion to Abandon and to Terminate Stay* ("Continuance Order").²⁹ The *Continuance Order* provided that the hearing would be continued to January 13, 2026, and that the Court would determine whether dismissal or conversion was appropriate if the Debtor had not cured outstanding fees owed to the UST and proof of a debtor in possession bank account.³⁰ The Court held a hearing regarding UST's *Motion to Dismiss*, Debtor's *Objection to Trustee's*

²⁵ WBL's *Mot. to Terminate Automatic Stay, and for Abandonment*, at pp. 13-14, ECF No. 82. See also *Agreed Order Between WBL SPE II, LLC, Strategic Funding Source, Inc d/b/a Kapitus, and the Debtor Extending the Automatic Stay and Resolving Their Respective Objection to the Debtor's Verified Mot. to Extend the Automatic Stay and Request for Expedited Hr'g.*, ECF No. 64.

²⁶ WBL's *Mot. to Terminate Automatic Stay, and for Abandonment*, at pp. 15, ECF No. 82.

²⁷ Debtor's *Obj. to WBL SPO II, LLC's Mot. to Terminate Automatic Stay and for Abandonment*, at pp. 1-3, ECF No. 85.

²⁸ Debtor's *Obj. to WBL SPO II, LLC's Mot. to Terminate Automatic Stay and for Abandonment*, at pp. 13-14, ECF No. 85.

²⁹ See Debtor's *Mot. to Continue Hr'g.*, ECF No. 89; *Order Granting Motion to Continue Hearings on the U.S. Trustee's Mot. to Convert Ch. 11 Case to Ch. 7 and Continuing WBL SPO II, LLC's Mot. to Abandon and to Terminate Stay*, ECF No. 90.

³⁰ *Order Granting Mot. to Continue Hr'gs. on the U.S. Trustee's Mot. to Convert Ch. 11 Case to Ch. 7 and Continuing WBL SPO II, LLC's Mot. to Abandon and to Terminate Stay*, ECF No. 90.

Motion to Dismiss, WBL's *Motion for Relief from Stay*, and Debtor's *Objection to WBL's Motion for Relief from Stay* on January 13, 2026, at 11:00 a.m.

At the January 13, 2026, hearing on UST's *Motion to Dismiss*, the UST indicated that the only item remaining outstanding was proof of Debtor's debtor in possession bank account ("DIP account").³¹ Debtor's counsel advised that Debtor had a bank account open, acknowledging that the depository institution was not accepted by the UST of this District.³² While the UST and Debtor disagreed on whether the bank account that Debtor opened was a DIP account, it became clear to the Court that Debtor had not provided UST with the proper documentation illustrating proof of the DIP account, or at the very least proof of an account with DIP account protections.³³

Without issuing a final verbal ruling on the UST's *Motion to Dismiss*, the Court turned to other matters on the docket including WBL's *Motion for Relief from Stay*, and Debtor's *Objection to WBL's Motion for Relief from Stay*.³⁴ WBL's counsel proffered to the Court that Debtor had not provided any of the previously agreed upon adequate protection payments.³⁵ Debtor's counsel could not refute that Debtor had not provided WBL with previously agreed upon adequate protection payments.³⁶ The parties affirmed that the collateral subject to WBL's *Motion for Relief from Stay* is the premises on which the business is being operated.³⁷ After hearing WBL's proffer regarding Debtor's continued failure to make agreed upon adequate

³¹ Hr'g on Jan. 13, 2026, at 11:24 a.m. Tr. pg. 3 at 19-24, ECF No. 108.

³² Hr'g on Jan. 13, 2026, at 11:26 a.m. Tr. pg. 4 at 21-25, pg. 5 at 1-2, ECF No. 108.

³³ Hr'g on Jan. 13, 2026, at 11:28 a.m. Tr. pg. 7 at 13-25, ECF No. 108.

³⁴ WBL's *Mot. to Terminate Automatic Stay, and for Abandonment*, ECF No. 82. Debtor's *Obj. to WBL SPO II, LLC's Mot. to Terminate Automatic Stay and for Abandonment*, ECF No. 85.

³⁵ Hr'g on Jan. 13, 2026, at 11:30 a.m. Tr. pg. 9 at 9-25, pg. 10 at 1-9, ECF No. 108.

³⁶ Hr'g on Jan. 13, 2026, at 11:31 a.m. Tr. pg. 10 at 11-17, ECF No. 108.

³⁷ Hr'g on Jan. 13, 2026, at 11:32 a.m. Tr. pg. 10 at 23-25, pg. 11 at 1-5, ECF No. 108.

protection payments, the Court indicated to all parties that it did not think the case needed to continue, and requested to hear arguments on dismissal or conversion.³⁸

In response, Debtor's counsel stated that Debtor had substantial income coming into the business, including noting that Debtor brought in a gross income of \$80,000.00 a month on an approximately \$25,000.00 payroll.³⁹ In turn, Kapitus noted that Debtor failed to make any of the agreed upon adequate protection payments on cash collateral to Kapitus.⁴⁰ Kapitus suggested it was not confident that Debtor would provide a feasible or confirmable plan, considering the prior default and failure to make agreed upon payments.⁴¹

The Court expressed its concern that Debtor had monthly gross income of \$80,000.00, while also hearing that Debtor was failing to make agreed upon adequate protection payments.⁴² In addition, the Court acknowledged there was no plan and otherwise very little being done to move the case forward.⁴³ As such, the Court requested that the parties advise it of whether the case should be converted to a chapter 7 or dismissed.⁴⁴ Debtor's counsel advised that he did not "believe there is recovery in a Chapter 7."⁴⁵ WBL advised it believed the case should be dismissed, and Kapitus expressed concern that if dismissal was ordered, it believed Debtor

³⁸ Hr'g on Jan. 13, 2026, at 11:36 a.m. Tr. pg. 13 at 20-25, ECF No. 108.

³⁹ Hr'g on Jan. 13, 2026, at 11:37 a.m. Tr. pg. 14 at 1-7, ECF No. 108.

⁴⁰ Hr'g on Jan. 13, 2026, at 11:39 a.m. Tr. pg. 15 at 1-14, ECF No. 108.

⁴¹ Hr'g on Jan. 13, 2026, at 11:38 a.m. Tr. pg. 14 at 16-25, ECF No. 108.

⁴² Hr'g on Jan. 13, 2026, at 11:40 a.m. Tr. pg. 16 at 1-11, ECF No. 108.

⁴³ Hr'g on Jan. 13, 2026, at 11:40 a.m. Tr. pg. 16 at 11-12, ECF No. 108.

⁴⁴ Hr'g on Jan. 13, 2026, at 11:41 a.m. Tr. pg. 16 at 13-17, ECF No. 108.

⁴⁵ Hr'g on Jan. 13, 2026, at 11:41 a.m. Tr. pg. 16 at 18-24, ECF No. 108.

would simply file another bankruptcy case.⁴⁶ Likewise, the UST supported dismissal of Debtor's chapter 11 case.⁴⁷ From the bench, the Court stated:

All right. So, I did check the Debtor's petition. The Debtor has filed four prior bankruptcy cases. This is the fifth case. The first case was filed in 2018, January 2018, the second case was filed in June of 2018, the third case was filed in August of 2019, and the fourth case was filed in April of 2024. This particular case was filed in July of 2025, which is approximately over six months ago. And given the stage, the state of -- given the fact that the case was filed over six months ago, we should be farther ahead in the case than we are right now. Based on the previous filing, and based on the comments that are made by Counsel for Creditors who are present, and information provided by the United States Trustee, the Court will dismiss the Chapter 11 case, and rather than convert it to a Chapter 7. It appears that the Debtor is operating a childcare facility. There is no indication that there's equity in the real estate, or other property for a Chapter 7 Trustee to administer on behalf of Creditors, and as such, the Court will go ahead and dismiss the Chapter 11 case. If the Debtor were to file again, and a Creditor filed a motion to dismiss the case with prejudice, for any new filing, I would entertain that kind of a motion, so - based on the prior filings, and the lack of effort that's been put into the case. But for this case, the motion to dismiss filed by the United States Trustee is granted. . . . Having dismissed the case, . . . the motion to terminate the automatic stay, and the motion to -- and the response to that motion, I will mark that moot.⁴⁸

Subsequently, the Court entered an *Order Granting United States Trustee's Motion to Dismiss Case and Notice of Entry Thereof*.⁴⁹

II. POSITIONS OF THE PARTIES

The Debtor filed a *Motion to Reconsider* pursuant to Rule 9024, which applies Fed. R. Civ. P. 60 Relief from Judgment or Order and stated that the Debtor has a basis for reconsideration due to “surprise” by the Order of Dismissal under 60(b)(1) and for “any other

⁴⁶ Hr’g on Jan. 13, 2026, at 11:42 a.m. Tr. pg. 17 at 1-25, pg. 18 at 1-2, ECF No. 108.

⁴⁷ Hr’g on Jan. 13, 2026, at 11:42 a.m. Tr. pg. 18 at 3-4, ECF No. 108.

⁴⁸ Hr’g on Jan. 13, 2026, at 11:44 a.m. Tr. pg. 18 at 6-25, pg. 19 at 1-15, ECF No. 108.

⁴⁹ *Order Granting United States Trustee's Motion to Dismiss Case and Notice of Entry Thereof*, ECF No. 94.

reason that justifies relief” under 60(b)(6). UST and WBL filed objections to the Debtor’s *Motion to Reconsider*.

The UST’s objection argued there was “cause” under section 1112(b) to dismiss Debtor’s case, and that Debtor had abundant opportunity to cure potential violations or prepare a defense.⁵⁰ UST reminded the Court that the *Motion to Dismiss* was filed on November 17, 2025, seeking dismissal for failure to file monthly operating reports and failure to present proof of a valid DIP account.⁵¹ UST advised that the July 2025 monthly operating report was not filed until September 2025; the August and September 2025 reports were not filed until December 2025; and that Debtor did not provide any excuse as to why the reports were not timely filed.⁵²

WBL’s objection asserted that Debtor filed this chapter 11 matter on the same day that WBL was scheduled to have a foreclosure on Debtor’s real property.⁵³ WBL further reminded the Court that Debtor had failed to make adequate protection payments that were agreed upon in the *Agreed Order* and asserts that Debtor had not made attempts to cure the default, despite ample opportunity.⁵⁴

As such, both WBL and UST requested that the Court deny Debtor’s *Motion for Reconsideration*. Debtor filed a *Reply* to each of the UST and the WBL. Debtor asserted that the UST indicated the lack of a DIP account was the sole remaining issue, and that Debtor relied on

⁵⁰ Trustee’s *Obj. to Debtor’s Mot. for Reconsideration of Order Dismissing Case*, ECF No. 111.

⁵¹ Trustee’s *Obj. to Debtor’s Mot. for Reconsideration of Order Dismissing Case*, at pp. 16-18, ECF No. 111.

⁵² Trustee’s *Obj. to Debtor’s Mot. for Reconsideration of Order Dismissing Case*, at pp. 18-23, ECF No. 111.

⁵³ WBL’s *Resp. to Debtor’s Mot. for Reconsideration of Order Dismissing Case*, at pp. 9, ECF No. 110.

⁵⁴ WBL’s *Resp. to Debtor’s Mot. for Reconsideration of Order Dismissing Case*, at pp. 13, ECF No. 110. *See also Agreed Order Between WBL SPE II, LLC, Strategic Funding Source, Inc d/b/a Kapitus, and the Debtor Extending the Automatic Stay and Resolving Their Respective Objection to the Debtor's Verified Mot. to Extend the Automatic Stay and Request for Expedited Hr’g.*, ECF No. 64.

this statement.⁵⁵ Debtor therefore argued that she “was not made aware that failing to pay adequate protection would result in the dismissal of the case,” which is the central argument on which Debtor relies in seeking this *Motion for Reconsideration*.⁵⁶

At the February 10, 2026, hearing on Debtor’s *Motion for Reconsideration*, Debtor, Debtor’s counsel, counsel for UST as well as counsel for creditors, WBL and Kapitus, made appearances.⁵⁷ Debtor’s counsel asserted that Debtor was not on proper notice that her case was subject to dismissal for reasons other than that which was outlined in the UST’s *Motion to Dismiss*.⁵⁸ Debtor, Ms. Riley, requested that the Court grant her *Motion for Reconsideration* and proffered to the Court that she felt the lending process and practices were unfair, which was neither at issue nor probative at this hearing.⁵⁹

UST asserted that the Debtor was on notice that its case could be dismissed at the January 13, 2026, hearing because Debtor’s *Continuance Order* specifically noted the case could have been dismissed if certain items remained outstanding.⁶⁰ WBL and Kapitus asserted that Debtor’s case could be dismissed at the discretion of the Court for ample reasons including (i) gross mismanagement of the estate, (ii) failure to maintain insurance, (iii) unauthorized use of cash

⁵⁵ Debtor’s *Reply to Trustee’s Obj. to Debtor’s Mot. for Reconsideration of Order Dismissing Case*, ECF No. 117.

⁵⁶ Debtor’s *Reply to Trustee’s Obj. to Debtor’s Mot. for Reconsideration of Order Dismissing Case*, at pp. 7, ECF No. 117.

⁵⁷ Hr’g on Feb. 10, 2026, at 12:43 p.m.

⁵⁸ Hr’g on Feb. 10, 2026, at 12:46 p.m.

⁵⁹ Hr’g on Feb. 10, 2026, at 12:52 p.m.

⁶⁰ Hr’g on Feb. 10, 2026, at 1:02 p.m.

collateral, and (iv) failure to comply with an order of the court, and thus, the Court should deny Debtor's *Motion for Reconsideration*.⁶¹

The Court took the matter under advisement. Additionally, the Court held in abeyance WBL's *Notice of Dismissal Bar*, which would operate to preclude Debtor from filing any Bankruptcy for 180 days following the entry of the order of dismissal.⁶²

III. DISCUSSION⁶³

The central issue before the Court is whether there are legal or factual bases to vacate the dismissal order and allow the case to be reinstated and administered under chapter 11 of the Bankruptcy Code. As explained below, the Court finds and concludes that there is no factual or legal support to grant Debtor's motion for reconsideration for two primary reasons: (1) no provision on under Rule 60(b) of the Federal Rules of Civil Procedure supports reconsideration; and (2) the record in the chapter 11 case supports dismissal.

A. The Court Denies Debtor's Motion for Reconsideration as There Was No Surprise or Mistake

Debtor files her *Motion for Reconsideration* pursuant to Fed. R. Bankr. P. 9024, incorporating Fed. R. Civ. P. 60(b)(1) and (6).⁶⁴ Rule 60(b)(1) and (6) provides that a Court may be relieved from a final judgment, order, or proceeding if the debtor shows any of the following:

(1) mistake, inadvertence, surprise, or excusable neglect;

. . . .
or

⁶¹ Hr'g on Feb. 10, 2026, at 1:10 p.m.

⁶² Hr'g on Feb. 10, 2026, at 1:13 p.m. See WBL's *Notice of Dismissal Bar*, ECF No. 95.

⁶³ The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. §§ 1408, 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

⁶⁴ Fed. R. Bankr. P. 9024 and Fed. R. Civ. P. 60(b). To clarify, Fed. R. Bankr. P. 9023 functions to apply Fed. R. Civ. P. 59 to the Bankruptcy Court. In turn, Fed. R. Bankr. P. 9024 makes applicable Fed. R. Civ. P. 60(b).

(6) any other reason that justifies relief.⁶⁵

Generally, “[a] motion for reconsideration does not provide a vehicle for a party to undo its own procedural failures.”⁶⁶ A motion for reconsideration cannot be used as a vehicle to re-litigate matters already litigated and decided by the court.⁶⁷ “[M]otions for reconsideration should not give parties a ‘second bite at the apple’ or ‘another roll of the dice.’”⁶⁸ Under Rule 60(b), the movant “bears a heavy burden of demonstrating ‘a justification so compelling that the [bankruptcy] court was required to vacate its order.’”⁶⁹

Debtor contends that her *Motion for Reconsideration* should be granted under Rule 60(b)(1) due to “surprise” or under Rule 60(b)(6) for “any other reason that justifies relief.” Courts generally afford Rule 60(b) a liberal construction.⁷⁰ Generally, relief under Rule 60(b)(1) is available in situations where (1) a party or attorney has made an excusable mistake or acted without authority, or (2) the presiding judge made a substantive error regarding the laws or facts involved in rendering the final judgment.⁷¹ Rule 60(b)(6) is described as a “catchall provision”

⁶⁵ Fed. R. Civ. P. 60(b)(1)-(6).

⁶⁶ *Marks 3-Zet-Ernst Marks GmBh & Co. KG v. Presstek, Inc.*, 455 F.3d 7, 15 (1st Cir. 2006) (discussing the legal standards for reconsideration).

⁶⁷ *See Standard Química de Venezuela v. Central Hispano International, Inc.*, 189 F.R.D. 202, 205, n. 4 (D.P.R. 1999) (outlining legal standards for reconsideration).

⁶⁸ *Conway v. A.I. DuPont Hosp. for Children*, Civil Action No. 04-4862, 2009 WL 1492178, at *4-5 (E.D. Pa. May 26, 2009) (discussing the legal standards for reconsideration).

⁶⁹ *See Auto-Owners Ins. Co. v. Ralph Gage Contracting, Inc.*, 748 F. App'x 967, 969 (11th Cir. 2018) (per curiam) (quoting *Cano v. Baker*, 435 F.3d 1337, 1342 (11th Cir. 2006) (per curiam)) (outlining burden and standard of proof under Rule 60(b)).

⁷⁰ *See Nisson v. Lundy*, 975 F.2d 802, 807 (11th Cir. 1992) (opining that Rule 60(b) should receive a “liberal and remedial construction.”) (citing *Meadows v. Cohen*, 409 F.2d 750, 752-53 (5th Cir. 1969)).

⁷¹ *See In re O'Hara*, 167 F.4th 358, 370-71 (6th Cir. 2026) (quoting *United States v. Reyes*, 307 F.3d 451, 455 (6th Cir. 2002)) (outlining analysis in determining whether relief is necessary under Rule 60(b)). *See also Kemp v. United States*, 596 U.S. 528, 535-39, 142 S. Ct. 1856 (2022) (providing in depth discussion on ‘mistake’ under Rule 60(b)(1)).

that allows courts to grant relief for a party from a final judgment or order for “any other reason that justifies relief,” and is “an extraordinary remedy which may be invoked only upon a showing of exceptional circumstances” and only when other grounds are inapplicable.⁷²

Here, the Court finds that Debtor failed to meet her burden because Debtor was not subject to surprise. Debtor was given many opportunities to cure the numerous deficiencies in the case. The Court entered the *Continuance Order* delaying the hearing on UST’s *Motion to Dismiss* by one week.⁷³ The *Continuance Order* explicitly outlined that the Court would determine whether dismissal or conversion was appropriate if the Debtor had not cured outstanding fees owed to the UST and proof of a DIP account.⁷⁴ Despite delaying its ruling, Debtor failed to adhere to the Court’s order by failing to provide proof of her DIP account.⁷⁵ Debtor cannot argue surprise that her case was dismissed when she failed to comply with the basic requirements of chapter 11 and this Court’s Orders. Additionally, Debtor did not show any “exceptional circumstances” to warrant relief for Debtor under Rule 60(b)(6). Therefore, Debtor’s *Motion for Reconsideration* should be denied.

B. Reconsideration is Denied Because the Record Supports Cause for Dismissal

⁷² *Auto-Owners Ins. Co. v. Ralph Gage Contracting, Inc.*, 748 F. App’x 967, 969 (11th Cir. 2018) (citations omitted). See also *D.R.T.G. Builders, L.L.C. v. Occupational Safety & Health Review Comm.*, 26 F.4t h 306, 313 (5th Cir. 2022) (denying relief under Rule 60(b)(6) because the requested relief that can be brought under Rule 60(b)(1)-(5) cannot be brought under Rule 60(b)(6)).

⁷³ See Debtor’s *Mot. to Continue Hr’g.*, ECF No. 89; *Order Granting Motion to Continue Hearings on the U.S. Trustee’s Mot. to Convert Ch. 11 Case to Ch. 7 and Continuing WBL SPO II, LLC’s Mot. to Abandon and to Terminate Stay*, ECF No. 90.

⁷⁴ *Order Granting Mot. to Continue Hr’gs. on the U.S. Trustee’s Mot. to Convert Ch. 11 Case to Ch. 7 and Continuing WBL SPO II, LLC’s Mot. to Abandon and to Terminate Stay*, ECF No. 90.

⁷⁵ See *Cal. Palms Addiction, Recovery Campus, Inc. v. Vara (In re Vara)*, Case No. 4:22-CV-0812, 2023 WL 2664284, at *4 n.10 (N.D. Oh. Mar. 27, 2023) (noting subsection 1112(b)(2) merely requires that there be “cause” to dismiss or convert).

In an oral ruling from the bench, this Court found that “cause” existed to either dismiss or convert the case.⁷⁶ As cause existed, the Court found that it was in the best interest of the creditors and the estate to dismiss the case, rather than convert. “Chapter 11 of the Bankruptcy Code enables a debtor company to reorganize its business under a court-approved plan governing the distribution of assets to creditors.”⁷⁷ Section 1112 governs the conversion or dismissal of chapter 11 cases.⁷⁸ To dismiss or convert the case, the Court must first identify whether there is “cause” to do so.⁷⁹ Subsection 1112(b) identifies a non-exhaustive list of examples that constitute “cause.”⁸⁰ As the list of examples under section 1112(b)(4) is non-exhaustive, the Court may dismiss or convert the chapter 11 case for reasons that are not specifically enumerated in the Code.⁸¹ If the Court finds “cause” to dismiss or convert, the debtor is afforded the opportunity to establish specific facts showing unusual circumstances that make conversion or dismissal not in the best interest of the creditors.⁸² When “cause” is established, and the debtor fails to show

⁷⁶ Hr’g on Jan. 13, 2026, at 11:44 a.m. Tr. pg. 18 at 6-25, pg. 19 at 1-15, ECF No. 108.

⁷⁷ *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 272 (2024) (quoting *U.S. Bank N.A. v. Village at Lakeridge, LLC*, 583 U.S. 387, 389 (2018)).

⁷⁸ 11 U.S.C. § 1112(b) (2026) (“the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause”).

⁷⁹ *Id.*

⁸⁰ 11 U.S.C. § 1112(b)(4)(A)-(K) (2026).

⁸¹ *In re Brown*, 951 F.2d 564, 572 (3d Cir. 1991) (acknowledging the factors under § 1112(b) are non-exhaustive and that courts may consider other factors that may arise).

⁸² 11 U.S.C. § 1112(b)(2) (“The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors”). *In re DRTMG, LLC*, 667 B.R. 862, 871 (Bankr. S.D. Ohio 2025).

unusual circumstances, the Court must then determine whether it is in the best interest of the creditors and the estate to convert or dismiss.⁸³

In this case, the UST's *Motion to Dismiss or Convert* alleged five (5) specific "causes" existed supporting dismissal of Debtor's case for (i) failure to file monthly operating reports under 11 U.S.C. § 1112(b)(4)(F); (ii) failure to pay quarterly fees to the UST pursuant to 11 U.S.C. § 1112(b)(4)(K); (iii) failure to provide information reasonably requested by the UST pursuant to 11 U.S.C. § 1112(b)(4)(H); (iv) failure to file a disclosure statement or plan pursuant to 11 U.S.C. § 1112(b)(4)(J); and lastly UST requested that the Court grant "additional general relief to which the United States Trustee may be entitled."⁸⁴

At the hearing on UST's *Motion to Dismiss*, the Court, after hearing from all parties in attendance, dismissed Debtor's case finding specifically that the case should be further along than that which was presented to the Court at the hearing.⁸⁵ Further, the Court acknowledged that Debtor's failure to provide agreed upon adequate protection payments and lack of equity in real property on which Debtor's business operated meant that the underlying business—a childcare facility—was subject to lose its primary place of business, and thus, become inoperable.⁸⁶ These findings, the specific reasons outlined in UST's *Motion to Dismiss*, and that dismissal, rather than conversion, was in the best interest of the creditors, supported the Court's decision to dismiss the case.⁸⁷ As such, dismissal was supported by the following "causes" outlined below.

⁸³ 11 U.S.C. § 1112(b)(1) (2026) (outlining that the Court must pick between dismissal or conversion based upon "whichever is in the best interests of creditors and the estate").

⁸⁴ Trustee's *Mot. to Dismiss*, at pp. 5-10, ECF No. 74.

⁸⁵ Hr'g on Jan. 13, 2026, at 11:44 a.m. Tr. pg. 18 at 6-25, pg. 19 at 1-15, ECF No. 108.

⁸⁶ *Id.*

⁸⁷ *Id.*

1. Unexcused Failure to Satisfy Timely Any Filing or Reporting Requirement

Disclosure and transparency are quintessential tenets of bankruptcy, especially concerning Chapter 11 debtors in possession.⁸⁸ “A debtor-in-possession is vested with significant power under the Bankruptcy Code and that power comes with certain [fiduciary] responsibilities.”⁸⁹ The responsibilities of a debtor in possession can be described as fiduciary because the actions and omissions may impact the right of others.⁹⁰

Debtor is required to file monthly operating reports under 11 U.S.C. §§ 704(a)(8), 1106(a)(1), and 1107(a)(1), the failure of which constitutes valid cause for dismissal because it is a breach of the debtor in possession’s fiduciary duties and subverts the Chapter 11 process.⁹¹ “The reports serve an important purpose: they allow the [UST] and parties in interest to monitor a debtor's financial performance, activities and operations.”⁹² Indeed, “monthly operating reports are more than busy work.”⁹³ Even if the debtor cured outstanding monthly operating reports to

⁸⁸ *In re Visicon S'holders Tr.*, 478 B.R. 292, 311 (Bankr. S.D. Ohio 2012) (“full, complete and candid disclosure of all financial information concerning the Chapter 11 debtor in possession is compulsory.”).

⁸⁹ *In re Turkey Leg Hut & Co. LLC*, 665 B.R. 129, 140 (Bankr. S.D. Tex. 2024).

⁹⁰ *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355, 105 S. Ct. 1986, 85 L. Ed. 2d 372 (1985) (recognizing debtors-in-possession are operationally equivalent to trustees).

⁹¹ 11 U.S.C. § 1107(a) (granting debtor in possession with the rights of Trustee subject to certain limitations); 11 U.S.C. § 1106(a)(1) (requiring the trustee to perform duties of the trustee outlined in 11 U.S.C. § 704); 11 U.S.C. § 704(a)(8) (requiring the filing of “periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires”). Courts have recognized the fiduciary nature of the reporting requirement. *See, e.g., In re Berryhill*, 127 B.R. 427, 433 (Bankr. N.D. Ind. 1991) (“Monthly operating reports are much more than busy work”); *In re Cont'l Holdings, Inc.*, 170 B.R. 919, 929 (Bankr. N.D. Ohio 1994) (“filing of materially inaccurate monthly operating reports can represent a factor in a court's finding of “cause” under § 1112(b).”).

⁹² *In re Four Wells, Ltd.*, Nos. 15–8020, 15–8021, 15–8022, 15–8023, 2016 WL 1445393, at *10, 2016 Bankr. LEXIS 1673, at *29 (B.A.P. 6th Cir. Apr. 12, 2016).

⁹³ *In re Berryhill*, 127 B.R. 427, 433 (Bankr. N.D. Ind. 1991). *See, e.g., In re Whitten*, 473 B.R. 380, 382 (Bankr. D. Colo. 2012) (flagrant disregard for reporting requirements by itself can constitute cause and whether debtor eventually filed the reports is immaterial); *In re Babayoff*, 445 B.R. 64, 81 (Bankr. E.D.N.Y. 2011) (operating reports provide necessary information about the progress of reorganization; late filing make evaluation more difficult, and missing filings may render evaluation impossible). 11 U.S.C. § 1112(b)(4)(F) (2026).

bring current by the time of the hearing, a debtor's prior pattern of failure to file or untimely filing of monthly operating reports can constitute cause under § 1112(b)(4)(F).⁹⁴ Notably, the monthly operating reports are due on the 21st day of the month following the month subject to the operating report.

Here, Debtor filed her petition in July 2025.⁹⁵ UST alleges that Debtor failed to timely file operating reports for August 2025, September 2025, and October 2025.⁹⁶ A review of the record indicates that Debtor consistently failed to timely file her monthly operating reports for the months of July, August, September, October, and November in 2025.⁹⁷ Debtor did not explain the reasons for the untimely filed monthly operating reports. Debtor's unexcused failure to timely file monthly operating reports constituted "cause" under subsection 1112(b)(4)(F).

2. Failure to Pay Any Fees or Charges Required Under Chapter 123 of Title 28

UST further alleged that Debtor failed to pay quarterly fees which totaled \$970.00.⁹⁸ Under section 11 U.S.C. § 1112(b)(4)(K), "cause" to dismiss or convert a debtor's bankruptcy case includes the debtor's "failure to pay any fees required under chapter 123 of title 28," which

⁹⁴ See *In re Four Wells, Ltd.*, 2016 WL 1445393, at *10 (B.A.P. 6th Cir. Apr. 12, 2016) ("although the monthly operating reports were current as of the Dismissal Hearing, the bankruptcy could properly conclude that Debtors' continuous failure to adhere to the UST's reporting deadlines constituted cause for dismissal of Debtors' bankruptcy cases").

⁹⁵ Volunt. Pet., ECF No. 1.

⁹⁶ Trustee's *Mot. to Dismiss*, at pp. 5, ECF No. 74.

⁹⁷ Ch. 11 Mon. Op. Rep. for the Mon. Ending: 07/31/2025, ECF No. 52; Ch. 11 Mon. Op. Rep. for the Mon. Ending: 08/31/2025, ECF No. 77; Ch. 11 Mon. Op. Rep. for the Mon. Ending: 09/30/2025, ECF No. 78; Ch. 11 Mon. Op. Rep. for the Mon. Ending: 10/31/2025, ECF No. 86; Ch. 11 Mon. Op. Rep. for the Mon. Ending: 11/30/2025, ECF No. 87.

⁹⁸ Trustee's *Mot. to Dismiss*, at pp. 6, ECF No. 74.

includes quarterly fees paid to the UST's office.⁹⁹ Under 28 U.S.C. § 1930(a)(6), the debtor is required to pay fees in each chapter 11 case.¹⁰⁰ The debtor's obligation to pay fees to the UST's office extends to each quarter in which the chapter 11 case is open.¹⁰¹

UST included in its *Motion* that Debtor had past due quarterly fees in the amount of \$970.00.¹⁰² At the hearing, the UST explained that past due fees were cured prior to the hearing.¹⁰³ Thus, at the January 13, 2026, hearing, Debtor was current. Despite the positive development, curing the outstanding fees after the fact may be insufficient to avoid a finding of "cause" under section 11 U.S.C. § 1112(b)(4)(K).¹⁰⁴

3. Failure to Timely Provide Information Reasonably Requested by the United States Trustee

Under 11 U.S.C. § 1112(b)(4)(H), the failure of the Debtor to provide information reasonably requested by the UST constitutes "cause" to dismiss or convert the Debtor's case.¹⁰⁵ The language of subsection 1112(b)(4)(H) simply requires that (1) the UST's made a reasonable

⁹⁹ 11 U.S.C. § 1112(b)(4)(K) (2026). See 28 U.S.C. § 1930(a)(6)(B)(i) (describing the quarterly fee to be paid to the United States Trustee) (2026). See also *Johnson & Dixie, LLC v. Office of the US Trustee*, Case No. 24-61719-CIV-SINGHAL, 2025 WL 3113212, at *3 (S.D. Fla. Sept. 25, 2025) (acknowledging that Bankruptcy court did not abuse its discretion because failure to comply with § 1112(b)(4)(K) by paying fees was certainly valid bases to dismiss the bankruptcy case). See also Fed. R. Bankr. P. 1017(b).

¹⁰⁰ See 28 U.S.C. § 1930(a)(6)(B)(i) (describing the quarterly fee to be paid to the United States Trustee).

¹⁰¹ See *In re CF & I Fabricators of Utah, Inc.*, 150 F.3d 1233, 1237 (10th Cir. 1998) ("Congress intended debtors pay UST fees until a case is converted, dismissed, or closed leaving no open docket in which to assess the fees."). See also *In re Hi-Toc Development Corp.*, 159 B.R. 691, 693 (S.D.N.Y. 1993) (upholding dismissal, in part, for failure to pay required quarterly fees).

¹⁰² Trustee's *Mot. to Dismiss*, at pp. 6, ECF No. 74.

¹⁰³ Hr'g on Jan. 13, 2026, at 11:26 a.m. Tr. pg. 4 at 21-25, pg. 5 at 1-2, ECF No. 108.

¹⁰⁴ See *In re Premier Golf Properties, LP*, 564 B.R. 710, 726-27 (Bankr. S.D. Cal. 2016) (finding cause existed due to that debtor's failure to pay quarterly fees and conversion was appropriate).

¹⁰⁵ 11 U.S.C. § 1112(b)(4)(H) (2026).

request for information, and (2) Debtor has not provided the requested information.¹⁰⁶ This subsection requires cooperation of the debtor with the UST underscoring the UST’s essential role in Chapter 11 cases.¹⁰⁷

In this case, on July 18, 2025, the UST conducted the mandatory Initial Debtor Interview (“IDI”) at which time, UST asserted he requested information regarding Debtor’s financial affairs from Debtor specifically including ‘*Bank Account Declaration Showing Closed Prepetition Bank Accounts*’ and ‘*Bank Account Signature Card for the Debtor-In-Possession Account*.’¹⁰⁸ Section 345(a) requires the trustee or a debtor in possession to deposit or invest money of the estate so that it will result in the “maximum reasonable net return . . . taking in to account the safety of such deposit or investment.”¹⁰⁹ Section 345(b) provides requirements as to where estate funds can be held to ensure that estate funds receive specific protections for the benefit of the creditors.¹¹⁰ To ensure these requirements are met, the UST provides a list of authorized depositories, all of which have entered into a ‘Uniform Depository Agreement’ (“UDA”) with the UST.¹¹¹

Accordingly, the UDA requires the depository to maintain collateral of 115% of the aggregate estate funds on deposit in each bankruptcy estate that exceeds the insurance limit of

¹⁰⁶ *Id.*

¹⁰⁷ See *In re DRTMG, LLC*, 667 B.R. 862, 874 (Bankr. S.D. Ohio 2025) (“providing information reasonably requested is part of a debtor-in-possession's fiduciary obligation of openness and transparency.”). “The UST is often aptly described as the “watchdog” in bankruptcy cases.” See *id.* (citing *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990)).

¹⁰⁸ Trustee’s *Mot. to Dismiss*, at pp. 8-9, ECF No. 74.

¹⁰⁹ See 11 U.S.C. § 345(a) (2026).

¹¹⁰ See 11 U.S.C. § 345(b) (2026).

¹¹¹ See U.S. Trustee Program Policy and Practices Manual, Vol. 7, “Banking and Bonding,” §§ 7-1.1-7-1.2. The manual is available at: <https://www.justice.gov/ust/united-states-trustee-program-policy-and-practices-manual>.

the Federal Deposit Insurance Corporation. These policies and procedures, among others included in the UDA, are meant to safeguard the estate funds in the event an authorized depository bank becomes distressed or fails.

UST asserted he requested this information “before, during, and after the IDI[.]”¹¹² At the February 10, 2026, hearing on Debtor’s *Motion for Reconsideration*, Debtor still had not provided the UST with the requested proof of closing pre-petition bank accounts nor had Debtor provided proof that its operating bank account satisfied the requirements to constitute a DIP account.¹¹³ The depository institution that Debtor advised she was using was not a DIP account as it was not on the list of authorized depositories provided by the UST in the Western District of Tennessee.

As the DIP account is required in a Chapter 11 case and necessary to safeguard estate funds, UST’s request for proof of Debtor’s compliance is certainly a reasonable request. Debtor was in her Chapter 11 case for nearly seven (7) months prior to dismissal, and thus, had ample opportunity to provide the requested proof.¹¹⁴ Debtor’s failure to provide the UST with information on a DIP account supports a finding of “cause” under 11 U.S.C. § 1112(b)(4)(H).

4. Failure to File a Disclosure Statement, or to File or Confirm a Plan

Lastly, the Debtor had not filed a disclosure statement or a plan. Failure to file a disclosure statement or a plan constitutes “cause” as contemplated by 11 U.S.C. §

¹¹² Trustee’s *Mot. to Dismiss*, at pp. 9, ECF No. 74.

¹¹³ Hr’g on Feb. 10, 2026, at 1:02 p.m. Trustee’s *Obj. to Debtor’s Mot. for Reconsideration of Order Dismissing Case*, at pp. 15-16, ECF No. 111.

¹¹⁴ See *In re Spencerport Development, LLC*, No. 14–21154 (PRW), 2014 WL 6886637, at *3-4 (Bankr. W.D.N.Y. Dec. 4, 2014) (dismissing the debtor’s case, in part, for debtor’s failure to provide proof of a Debtor-in-possession account).

1112(b)(4)(J).¹¹⁵ The “filing of a disclosure statement and filing and confirmation of a plan is central to the progress of a successful Chapter 11 case.”¹¹⁶ The plan serves as a roadmap for the debtor’s reorganization and exit from the bankruptcy.¹¹⁷

Disclosure and transparency are essential components of the bankruptcy process.¹¹⁸ The disclosure statement discloses information to the creditors so that each creditor may cast an informed vote on the plan.¹¹⁹ In turn, the plan provides each party in interest and the Court with an unambiguous explanation of the debtor’s reorganization.¹²⁰ As such, subsection 1112(b)(4)(J) reflects the filings importance in the bankruptcy process.

Here, the undisputed facts show that the Debtor failed to file a disclosure statement and plan. Debtor’s *Objection* to UST’s *Motion to Dismiss*, in fact, advises that Debtor would “have a plan filed with a disclosure statement prior to January 1[, 2026].”¹²¹ Neither a plan nor a disclosure statement was filed by January 1, 2026. Indeed, Debtor was in her Chapter 11 case for nearly seven (7) months prior to dismissal and had neither filed a plan nor a disclosure statement

¹¹⁵ 11 U.S.C. § 1112(b)(4)(J) (2026). *See also* *Hall v. Vance*, 887 F.2d 1041, 1044-46 (10th Cir. 1989) (upholding dismissal of chapter 11 case due to failure to provide adequate information about the debtors’ ongoing financial difficulties); *In re Hi-Toc Development Corp.*, 159 B.R. 691, 693 (S.D.N.Y. 1993) (upholding dismissal, in part, for failure to present a plan of reorganization).

¹¹⁶ *In re Babayoff*, 445 B.R. 64, 78 (Bankr. E.D.N.Y. 2011).

¹¹⁷ *See In re Babayoff*, 445 B.R. at 78 (“the plan is the framework for the debtor’s reorganization and exit from bankruptcy.”).

¹¹⁸ *See id.* (quoting *In re Midwest Props. of Shawano, LLC*, 442 B.R. 278, 286 (Bankr. D. Del. Dec. 20, 2010)).

¹¹⁹ *See id.* (citing *In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994)). *See* 11 U.S.C. § 1125(a)(1) (2026).

¹²⁰ *See id.*

¹²¹ Debtor’s *Obj. to U.S. Trustee’s Mot. to Dismiss*, at pp. 15, ECF No. 79.

as of the January 13, 2026, hearing on UST’s *Motion to Dismiss*.¹²² The failure of Debtor to file a disclosure statement and plan constitutes “cause” under 11 U.S.C. § 1112(b)(4)(J).

B. Additional Reasons for Dismissal

Section 1112(b) outlines sixteen (16) factors each of which may establish “cause” to dismiss or convert the chapter 11 case.¹²³ The list of factors under subsection 1112(b)(4) is non-exhaustive, and thus, the Court considers other factors in determining whether “cause” exists to dismiss or convert the case.¹²⁴ Subsection 1112(b)(2) does not operate to limit the Court to dismiss or convert a chapter 11 case exclusively for the reasons outlined in a requesting party’s motion.¹²⁵ To the contrary, subsection 1112(b)(2) merely requires that there be “cause” to dismiss or convert.¹²⁶

Buttressing the Court’s statutory power to dismiss or convert under subsection 1112(b)(4), is the language in section 305, which provides that the Court may, *sua sponte*, dismiss a case “if the interests of creditors and the debtor would be better served by such dismissal”¹²⁷ Moreover, UST’s *Motion to Dismiss* requests additional general relief to which it may be entitled, permitting the Court to provide additional relief identified by the Court

¹²² *In re Hi-Toc Development Corp.*, 159 B.R. 691, 693 (S.D.N.Y. 1993) (“Where debtors-in-possession fail to perform their functions, they may not utilize Chapter 11 to prolong control of an insolvent enterprise where no benefit to the public or creditors is plausible.”).

¹²³ 11 U.S.C. § 1112(b)(4)(A)-(K) (2026).

¹²⁴ *See In re Babayoff*, 445 B.R. at 76.

¹²⁵ *In re Great American Pyramid Joint Venture*, 144 B.R. 780, 789 (Bankr. W.D. Tenn. 1992) (“[A] bankruptcy judge may, under section 105(a), as amended, convert or dismiss a case sua sponte even though section 1112(b) explicitly requires that the request be made by a party in interest.”).

¹²⁶ *See Cal. Palms Addiction, Recovery Campus, Inc. v. Vara (In re Vara)*, Case No. 4:22-CV-0812, 2023 WL 2664284, at *4 n.10 (N.D. Oh. Mar. 27, 2023).

¹²⁷ 11 U.S.C. § 305(a) (2026). *See also In re Century City, Inc.*, 8 B.R. 25, 28 (Bankr. D. N.J. 1980) (recognizing section 305 provides power of dismissal to the Court).

but not explicitly requested by the moving party.¹²⁸ Thus, while the UST's *Motion* and information obtained during the hearing held on January 13, 2026, support the Court's decision to dismiss the chapter 11 case, the Court will also briefly review two (2) additional factors.¹²⁹

1. Failure to Comply with an Order of the Court

First, section 1112(b)(4)(E) provides that "failure to comply with an order of the court" constitutes cause to convert or dismiss a chapter 11 case.¹³⁰ Failure to comply with even a single court order is sufficient to constitute cause under section 1112(b)(4)(E).¹³¹ It is inconsequential whether the failure to comply is willful, in bad faith, fraudulent, or simply negligent or accidental.¹³²

Here, Debtor failed to comply with the *Agreed Order Between WBL SPE II, LLC, Strategic Funding Source, Inc. d/b/a Kapitus, and the Debtor Extending the Automatic Stay and Resolving Their Respective Objection to the Debtor's Verified Motion to Extend the Automatic Stay and Request for Expedited Hearing*, in which Debtor agreed to provide adequate protection payments to WBL.¹³³ Likewise, Debtor also failed to comply with a separate order titled, *Agreed Order Granting Motion For Adequate Protection to Strategic Funding Source, Inc d/b/a Kapitus*,

¹²⁸ Trustee's *Mot. to Dismiss*, at pp. 9, ECF No. 74.

¹²⁹ *In re Great American Pyramid Joint Venture*, 144 B.R. 780, 789 (Bankr. W.D. Tenn. 1992) ("[A] bankruptcy judge may, under section 105(a), as amended, convert or dismiss a case sua sponte even though **section 1112(b)** explicitly requires that the request be made by a party in interest.").

¹³⁰ 11 U.S.C. § 1112(b)(4)(E) (2026).

¹³¹ *In re Hoyle*, No. 10–01484–TLM, 2013 WL 210254, at *8-9 (Bankr. D. Idaho Jan. 17, 2013) (quoting *In re Bijelonic*, No. CV 11–08077–JVS, 2012 WL 2263289, *4 (C.D. Cal. June 15, 2012)).

¹³² *In re Hoyle*, 2013 WL 210254, at *8-9 (citing *In re Babayoff*, 445 B.R. 64, 80 (Bankr. E.D.N.Y. 2011)).

¹³³ *Agreed Order Granting Motion for Adequate Protection to Strategic Funding Source, Inc d/b/a Kapitus*, at pp. at 2, ECF No. 64.

in which Debtor agreed to provide adequate protection payments to Creditor, Kapitus.¹³⁴

According to WBL's filings as well as WBL's and Kapitus' respective proffers at the hearing held on January 13, 2026, Debtor failed to provide any adequate protection payments to either of WBL or Kapitus in violation of the *Agreed Orders*, despite Debtor's counsel stating that Debtor's business brought in \$80,000.00 in gross income each month with only \$25,000.00 in payroll.¹³⁵ Debtor's failure to comply with a court order is sufficient to constitute "cause" under section 1112(b)(4)(E).

2. Gross Mismanagement of the Estate

Second, section 1112(b)(4)(B) provides that the gross mismanagement of the estate can constitute "cause" to convert or dismiss a chapter 11 case.¹³⁶ The failure to timely complete and file monthly operating reports may demonstrate gross mismanagement of the estate to the extent such failure renders the financial picture of the estate "materially inaccurate."¹³⁷ Gross mismanagement of the estate is a breach of the fiduciary duty that a debtor in possession owes to its Creditors.¹³⁸

Here, Debtor has exhibited a general indifference to her obligations under the Bankruptcy Code and pursuant to the Court's orders. Each element of "cause" outlined above collectively supports a finding of gross mismanagement of the debtor in possession's estate.

¹³⁴ *Agreed Order Granting Motion for Adequate Protection to Strategic Funding Source, Inc d/b/a Kapitus*, pp. at 8, ECF No. 65.

¹³⁵ Hr'g on Jan. 13, 2026, at 11:36 a.m. Tr. pg. 13 at 20-25, ECF No. 108. *See also Resp. by World Bus. Lenders, LLC to Debtor's Mot. for Reconsideration of Order Dismissing Case*, pp. at 14, ECF No 110.

¹³⁶ 11 U.S.C. § 1112(b)(4)(B) (2026).

¹³⁷ *In re Turkey Leg Hut & Co. LLC*, 665 B.R. 129, 140 (Bankr. S.D. Tex. 2024); *In re JJ Arch LLC*, 663 B.R. 258, 279-80 (Bankr. S.D.N.Y. 2024).

¹³⁸ *In re M.A.R. Designs & Constr., Inc.*, 653 B.R. 843, 857 (Bankr. S.D. Tex. 2023).

Debtor consistently failed to timely file monthly operating reports as well as failing to timely pay quarterly fees. Debtor likewise ignored agreements to provide adequate protection to its Creditors, WBL and Kapitus. Indeed, Debtor purportedly continued to reap the benefits of her business as Debtor's counsel asserted the Debtor's business "brings in \$80,000.00 a month, and payroll's \$25,000.00."¹³⁹ Taken together, the above findings support an additional finding of "cause" under section 1112(b)(4)(B) for gross mismanagement of the estate.

C. Debtor Failed to Establish Unusual Circumstances

Before a finding of dismissal or conversion is finalized, the Court must consider whether the Debtor established any unusual circumstances that led to its failures or omissions in the Chapter 11 case, pursuant to 11 U.S.C. § 1112(b)(2).¹⁴⁰ The Bankruptcy Code does not define "unusual circumstances." Generally, the Bankruptcy Court has discretion in determining whether unusual circumstances identified by the Debtor weigh against the dismissal or conversion.¹⁴¹

The unusual circumstances exception requires the following:

(1) the Court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate; and the Debtor must establish (2) that there is a reasonable likelihood of confirmation of a plan within a reasonable period of time, (3) there is a reasonable justification for the acts or omissions that gave rise to a finding of cause, and (4) the acts or omissions underlying the finding of cause will be cured within a reasonable time.¹⁴²

Here, Debtor failed to establish any unusual circumstances. Debtor likewise failed to file a plan of reorganization. Indeed, Debtor did not file a plan prior to the dismissal despite stating she was

¹³⁹ Hr'g on Jan. 13, 2026, at 11:37 a.m. Tr. pg. 14 at 1-7, ECF No. 108. *See also* WBL's *Resp. to Debtor's Mot. for Reconsideration*, ECF No. 110.

¹⁴⁰ 11 U.S.C. § 1112(b)(2) (2026).

¹⁴¹ *In re The 1031 Tax Group, LLC*, 374 B.R. 78, 93 (Bankr. S.D.N.Y. 2007).

¹⁴² *In re DRTMG, LLC*, 667 B.R. 862, 876 (Bankr. S.D. Ohio 2025).

“working toward a meaningful plan” in Debtor’s *Objection of Debtor to U.S. Trustee’s Motion to Dismiss*, which was filed more than one month before the ultimate dismissal.¹⁴³

The Court lacks confidence in Debtor’s ability to provide a confirmable plan within a reasonable period. Likewise, Debtor has not shown that the repeated omissions constituting cause to dismiss will be cured or otherwise will not happen again. As such, this Court finds that Debtor did not establish unusual circumstances necessary to support a finding under the unusual circumstance’s exception.

IV. CONCLUSION AND ORDER

For the reasons stated above, the Court finds and concludes that Debtor’s *Motion for Reconsideration* (ECF No. 103) should be denied. Accordingly, it is **ORDERED**:

1. Debtor’s *Motion for Reconsideration* is **DENIED**.
2. Debtor’s chapter 11 case (Case No. 25-23245) remains dismissed.
3. Creditor’s request that Debtor, Dwan Akoi Riley, is barred from filing a bankruptcy petition under any chapter of the Bankruptcy Code through six (6) months from the date of entry of this order is **DENIED**.

Copies to be furnished to:

Debtor
Debtor’s Attorney
United States Trustee
All creditors on Matrix

¹⁴³ Debtor’s *Obj. of Debtor to U.S. Trustee’s Mot. to Dismiss*, pp. at 11, ECF No. 79.